

1 **Education and Workforce Development Cabinet**

2 **Kentucky Board of Education**

3 **Department of Education**

4 **(Amended After Comments)**

5 **703 KAR 5:080. Administration Code for Kentucky's Educational Assessment Program.**

6 RELATES TO: KRS 158.6453, 158.6455

7 STATUTORY AUTHORITY: KRS 156.070, 158.6453, 158.6455

8 NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.6455 requires the Kentucky Board  
9 of Education to promulgate administrative regulations to establish a system for identifying and

10 rewarding successful schools and to establish appropriate consequences for schools failing to

11 meet or exceed their assistance line. This administrative regulation establishes an Administration

12 Code for Kentucky's Educational Assessment Program for appropriate testing practices for state

13 required tests.

14 Section 1. Incorporation by Reference. (1) The "Administration Code for Kentucky's

15 Educational Assessment Program", **February 2014** [~~December 2013~~] [dated May 2009, revised

16 ~~September 2009~~], is incorporated by reference.

17 (2) This document may be inspected, copied, or obtained, subject to applicable copyright law, at

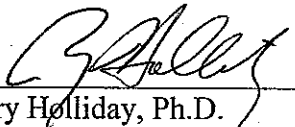
18 the Department of Education, Office of Assessment and Accountability, 18th Floor, Capital

19 Plaza Tower, 500 Mero Street, Frankfort, Kentucky, Monday through Friday, 8 a.m. through

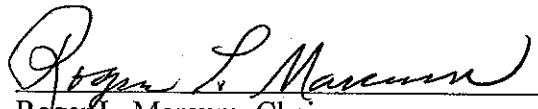
20 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

2-14-14  
(Date)

  
Terry Holliday, Ph.D.  
Commissioner of Education

2-14-14  
(Date)

  
Roger L. Marcum, Chairperson  
Kentucky Board of Education

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation: 703 KAR 5:080

Agency Contact Person: Kevin C. Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: The revised regulation clarifies test administration and security procedures to ensure consistent implementation in the state-required assessment and accountability system that classifies schools and districts.

(b) The necessity of this administrative regulation: KRS 158.6453 requires the Kentucky Board of Education to create and implement a balanced statewide assessment program that measures the achievement of students, schools and districts, complies with the federal No Child Left Behind Act of 2001, 20 U.S.C. secs. 6301 et seq., or its successor and ensures accountability.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides information necessary for implementation of the statewide assessment and accountability system. The regulation provides test administration and security procedures in the requirements of KRS 158.6453, KRS 158.6455 and the No Child Left Behind Act of 2001, 20 U.S.C. secs. 6301 et seq.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides guidance on the test administration and security procedures in the state-required assessment and accountability programs. The regulation provides a rationale, appropriate assessment practices, procedures for reporting concerns regarding errors in assessment materials, a process for violations of test administration and security procedures, for the review of secure assessment components and a proper reporting of student data and nonacademic indicators.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

The amendment incorporates test security suggestions from Kentucky's security audit; clarifies issues highlighted during the allegation process and in conversations with stakeholders; and makes language and format improvements.

(b) The necessity of the amendment to this administrative regulation: The amendment provides clarification on Kentucky's test administration and security procedures to improve the implementation in Kentucky classrooms.

(c) How the amendment conforms to the content of the authorizing statute: The amendment provides guidance test administration and security procedures in the requirements of KRS 158.6453, KRS 158.6455 and the No Child Left Behind Act of 2001, 20 U.S.C. secs. 6301 et seq.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides necessary clarification on test administration and security procedures to ensure valid test results.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All public school districts in Kentucky and supporting staff in the Kentucky Department of Education.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Staff in schools and school districts administers the state-required assessment using consistent rules and procedures. The amendment ensures consistent procedures.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no new costs to school districts.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Kentucky schools and districts will have clear guidance on test administration and security procedures.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The proposed amendment will require development of new explanatory materials and data programs for new assessment and accountability program in the normal course of work for staff. No additional costs are expected.

(b) On a continuing basis: The proposed regulation does not result in additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: KDE operating funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Current funding supports implementation and data reporting for school and district accountability.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? (Explain why or why not) ) Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation Number: 703 KAR 5:080

Contact Person: Kevin C. Brown

Phone number: 502-564-4474

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? School districts.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

KRS 158.6453, KRS 158.6455 and the No Child Left Behind Act of 2001, 20 U.S.C. secs. 6301 et seq.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

There will be no additional revenue generated by this administrative regulation. No additional costs to school districts are expected.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? The proposed regulation will require no additional cost.

(d) How much will it cost to administer this program for subsequent years? The proposed regulation will require no additional cost.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**Summary of Material Incorporated by Reference and**  
**Summary of Changes to Material Incorporated by Reference**

**703 KAR 5:080, Administration Code for Kentucky's Educational Assessment Program**

- (1) The following documents are incorporated by reference:
  - (a) "703 KAR 5:080 Administration Code For Kentucky's Educational Assessment Program", **February 2014** ~~[December 2013]~~ ~~[September 2009]~~
- (2) This document is to provide direction test administration and security procedures in the state-required assessment and accountability programs KRS 158.6453, KRS 158.6455, and the No Child Left Behind Act of 2001, 20 U.S.C. Secs. 6301 et. seq.
- (3) The document incorporated by reference consists of (21) pages.

**STATEMENT OF CONSIDERATION  
RELATING TO 703 KAR 5:080  
Administration Code for Kentucky's Educational Assessment Program**

**Kentucky Department of Education  
Office of Assessment and Accountability**

**Amended After Comments**

1. A public hearing was scheduled on the above regulation on January 23, 2014 at 2:00 p.m. Eastern Time, in the State Board Room, Kentucky Department of Education, 500 Mero Street, 1st Floor, Frankfort, Kentucky, but was cancelled when no one indicated that they wanted to speak.

2. The following individuals submitted written comments:

<u>Name and Title</u>	<u>Agency/Organization/Entity/Other</u>
Marilyn Mayo, District Assessment	Boyd County Schools Coordinator
Mary W. Ruble, Assistant Ex Director	Kentucky Education Association (KEA)

3. The following people from the promulgating administrative body responded to the written comments:

<u>Name and Title</u>
Kevin C. Brown, General Counsel/Associate Commissioner, Office of Guiding Support Services
Rhonda Sims, Director, Division of Support and Research
Bridget Stanfield, Branch Manager, Division of Support and Research
Cindy Greer, Education Consultant, Division of Support and Research
Kathy Moore, Education Consultant, Division of Support and Research
Patsy Kenner, Allegations Coordinator, Office of Guiding Support Services
David Wickersham, Assistant General Counsel, Office of Guiding Support Services

### Summary of Comments and Responses

- (1) Subject Matter: Security of testing materials and the supervision of students  
Marilyn Mayo
  - (a) Comment: The commenter questioned whether the document incorporated by reference (administration code) intended to state that a student should not be left alone with test materials at any time, and not only during a testing session.
  - (b) Response: The agency agrees with the commenter that the administration code should clarify that students are not to be alone with test materials at any time. The administration code will be amended to provide that students are not to be left alone at any time with test materials.
- (2) Subject Matter: Submission of test materials that are not to be scored  
Marilyn Mayo
  - (a) Comment: The commenter indicated a discrepancy in the administration code directions for the submission of test items that are taken for disciplinary purposes and that are not to be scored. The administration code states that the retaken item is to be marked "NOT TO BE SCORED" and then provides that such items "shall be submitted for scoring to the testing contractor."
  - (b) Response: The agency has reviewed this comment and agrees that items that are retaken for disciplinary purposes should not be submitted to contractors. Testing contractors often do not accept materials that are not to be scored. The administration code will be amended to provide for the direct submission of items retaken for disciplinary purposes to the agency.
- (3) Subject Matter: Procedures to report a concern regarding assessment materials  
Marilyn Mayo
  - (a) Comment: The commenter pointed out that identifying concerns by test form number or letter may not be efficient, as the manner in which test forms are identified varies among testing contractors. The commenter suggested that more general wording should be used so as to apply to all tests.
  - (b) Response: The agency has carefully considered this comment and confirmed that not all test vendors use the format of number and letter to identify test forms. Because the regulation applies to all state-required assessments, and a problem with materials could occur with any state-required assessment, the directions should be general. The agency amended the language to "test form identification" which indicates whatever number, letter, or combination is used by a particular testing vendor.



- (4) Subject Matter: Reporting an error in assessment materials  
Marilyn Mayo
- (a) Comment: The commenter stated that the administration code contains awkward phrasing in directing those reporting an error in assessment materials to summarize and/or document the error. The commenter suggested that, if a summary is given, then documentation has occurred and there is no need for an "and/or" statement.
- (b) Response: The agency agrees with the commenter and has made an amendment to clarify that a summary serves as the needed documentation.
- (5) Subject Matter: Violations of the administration code that need not be reported  
Marilyn Mayo
- (a) Comment: The commenter indicated that a section of the administration code suggests that a violation involving a student who should receive accommodations, but did not receive those accommodations, implies that the student should provide their own accommodations.
- (b) Response: The agency has reviewed this comment and agrees that amendment is necessary to provide clarification. The agency has changed the word "have" to "were."
- (6) Subject Matter: Investigation of an anonymously reported allegation  
Marilyn Mayo
- (a) Comment: The commenter expressed concern that the administration code, as written, suggests that an anonymous allegation may only be investigated if the allegation is submitted in writing. The commenter suggested that anonymous allegations should also be investigated when submitted by telephone.
- (b) Response: The agency has carefully considered this comment. Since the last revision of the regulation, the agency's practice has been to accept and investigate anonymous allegations submitted either in writing or by telephone. Accordingly, the agency will make an amendment to indicate that anonymous allegations submitted by telephone will also be investigated.
- (7) Subject Matter: The use of verbal and non-verbal prompts and cues  
KEA
- (a) Comment: The commenter noted that reminding students to attend to task through verbal and non-verbal prompts and cues is a technique routinely used by all teachers with all students and is a generally accepted practice of test administration. The commenter did not request any amendment.

- (b) Response: The agency agrees with this thoughtful comment and, as no amendment was requested, no change has been made in response.

**Summary of Statement of Consideration and  
Action Taken by Promulgating Administrative Body**

The Kentucky Department of Education has responded to comments from the public regarding proposed amendments to 703 KAR 5:080. Comments requested the addition of specific language and the replacement of other language. In making requested amendments, the agency identified punctuation, layout changes, and phrasing changes that were necessary to provide clarity of meaning.

In response to concerns about the security of testing materials and the supervision of students, the agency has amended language to state that students are not to be left alone at any time with test materials.

In response to concerns about the submission of test materials that are not to be scored, the agency has amended language to provide that items retaken for disciplinary purposes are to be submitted to the agency.

In response to concerns about the procedures to report a concern regarding assessment materials, the agency has amended the administration code to include the phrase "test form identification."

In response to a comment regarding violations of the administration code that need not be reported, the agency has amended language to provide clarification.

In response to a comment regarding the investigation of an anonymously reported allegation, the agency has added language to indicate that anonymous allegations submitted by telephone will also be investigated.

As no amendment was requested, the agency has made no amendment in response to a comment regarding the use of verbal and non-verbal prompts and cues.

The agency proposes, after comments, the following amendments to the administration code, incorporated by reference into 703 KAR 5:080:

Section 1(1)

Page 1

Line 15

After "Program", insert "February 2014".  
Delete "December 2013".

## MATERIAL INCORPORATED BY REFERENCE

Page 12, Not Acceptable column, first entry-Students being left alone to take the test  
Removed "in a room to take the test" and replaced with "at any time with test materials".

Page 15, Acceptable column, third entry- Test Item Retaken for Disciplinary Purposes  
Clarified that retaken items for disciplinary purposes are submitted to the Kentucky Department of Education and not to the testing contractor.

Page 18, Number 2 for reporting a concern regarding assessment materials  
Removed "number or letter" and replaced with identification, added "test" before word "form".

Page 18, Number 3 for reporting a concern regarding assessment materials  
Removed "and/or document". Removed "documentation" and replaced with "summary".

Page 19, Allegations that need not be submitted, last bullet  
Removed "have" and replaced with "were".

Page 19 Step 2, Investigation of an anonymously reported allegation  
Added "or by phone call".

Table of Contents

Page 2

Page numbers aligned.

Pages 6, 7, 8, 10, 11, 17, 20, 21

Punctuation (commas, semi-colons, capitalization, hyphens) was revised for consistent formatting.

Pages 6, 9, 12, 15, 19, 20, 21

Words were added and removed to improve readability and clarity and to correct typographical errors.

Pages 15, 16

Three entries under the Not Acceptable column were rearranged to better match entries in the Acceptable column, making the entries consistent with the rest of the document.

Page 17

Revised language for clarity. Removed "this Administration Code, and the conditions under which each student uses the accommodations as described in the student's IEP, 504 Plan, or PSP." and replaced with "the conditions under which each student uses the accommodations as described in the student's IEP, 504 Plan, or PSP. Individuals shall also receive Administration Code training and agree to".